U.S. Department of Housing and Urban Development
Community Planning and Development

Special Attention of:
All Secretary's Representatives
All State/Area Coordinators
All CPD Division Directors
All HOME Coordinators
All HOME Participating Jurisdictions

Notice: CPD 97-08

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Cross Reference:

SUBJECT: GUIDANCE ON THE USE OF HOME FUNDS WITH HOPE VI AND PUBLIC HOUSING FUNDS

I. Purpose

The purpose of this notice is to provide guidance to HUD Field Offices, HOME Participating Jurisdictions (PJs), and public housing authorities (PHAS) regarding the use of HOME Investment Partnerships funds in conjunction with HOPE VI and public housing funds. This notice is also largely applicable to PHA development projects using HOME with public housing and other financing as allowable under 24 CFR Part 941, Subpart F. Local governments and their community development agencies have a vested interest in the development choices of PHAS, conversely PHAs are affected by local affordable housing priorities. Each can be a valuable resource to the other, especially if there is a mutual understanding of the how respective funding sources can be used. This Notice aims to increase that mutual understanding by outlining each other's activities using HOME, HOPE VI, and other public housing funds and the issues to be considered when the funds are combined.

II. Background

A. HOME

HOME Investment Partnerships Act funds are authorized under Title III of the Cranston-Gonzalez National Affordable Housing Act, as amended (42 U.S.C. 120701 et seq.). The HOME program provides formula funding to State and local governments to expand the supply of decent and affordable housing for low- and very low-income families.

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B. HOPE VI

The HOPE VI program was created by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (P.L. 102-389), approved on October 6, 1992 (the 1993 Appropriations Act). Congress has never passed an authorization bill for the program, and, therefore, HUD has not issued program regulations. Grants are governed by each Fiscal Year's Notice of Funding Availability (NOFA) and Grant Agreement. The HOPE VI Program provides funding to PHAs to improve public housing and the lives of its residents through demolition of obsolete public housing, reconstruction, rehabilitation, management improvements, and self-sufficiency programs. The requirement to provide one-for-one replacement housing under section 18 of USHA was suspended by HUD's FY 1995, 1996 and 1997 Appropriations Acts. Accordingly, a PHA is not required to satisfy the one-for-one replacement requirement with respect to any application involving the demolition, disposition, or conversion to homeownership of public housing units that is approved by HUD on or before September 30, 1997.

Among the primary goals stated in the FY 1997 NOFA (April 14, 1997, Federal Register, Vol. 61, No. 71, 18241-18260) are:

Changing the physical shape of public housing. This includes tearing down severely deteriorated and obsolete public housing and replacing it with homes that complement the surrounding neighborhoods and are attractive and marketable to the people they are intended to serve, meeting contemporary standards for modest comfort and livability.

Lessening concentrations of poverty by placing public housing in nonpoverty neighborhoods, or by promoting mixed-income communities where public housing once stood alone, thereby ending the social and economic isolation of public housing residents.

Forging partnerships with other agencies, local governments, nonprofit -organizations, and private businesses to leverage support and resources, whether financial or in-kind contributions.

C. Public Housing Development Funds

Public Housing Development funds are used by PHAs in accordance with regulations at 24 CFR Part 941 for the development of housing units which serve the needs of families eligible for public housing. Rules regarding the use of development funds in mixed-finance revitalization projects were published as subpart F of part 941 on May 2, 1996. Although the last development funds were appropriated in FY 1995, PHAs may have funds from previous years that they have not yet used.

D. Public Housing Modernization Funds

PHAs use Public Housing Modernization funds in accordance with regulations at 24 CFR Part 968. Specific modernization programs are the Comprehensive Grant Program, a formula grant program for PHAs with 250 units or more, and the Comprehensive Improvement Assistance Program, a competitive grant program for PHAs with fewer than 250 units. Recent legislation allows PHAs to use funds approved for modernization for development activities pursuant to Part 941 and authorizes the use of public housing development and modernization funds for HOPE VI activities. PHAs wishing to use modernization funds for development projects must get prior approval from HUD, and should consult HUD Notice PIH 96-56(HA) , issued July 29, 1996, which provides guidance on using modernization funds for development activities. If modernization funds are used to carry out development activities, HOME funds may also be used in the project, as discussed below.

There is a statutory prohibition against using HOME funds to carry out activities authorized under Part 968, Public Housing Modernization, or provide assistance authorized under Part 990, Annual Contributions for Operating Subsidy, as described in Sec. 92.214, Prohibited Activities, of the HOME Rule. (see Section 212(d)(4) and (5) of NAHA).

III. HOME and Public Housing in Mixed-Finance Development

Due to shrinking resources, the poor condition of some public housing, and the need to expand the stock of safe and decent affordable housing, HUD has encouraged PHAs to develop not only replacement public housing units, but also to mix public housing funds with other public and private resources to create developments which allow for a mix of incomes among residents. On May 2, 1996, HUD issued an interim rule that added a new subpart F to 24 CFR part 941, and which established the regulatory framework for the use of public housing development funds in mixed finance-projects (see 61 FR 19708).

Mixed-financed projects bring together multiple funding sources, targeting tenants with a broader range of incomes than traditional public housing will allow. Such developments can simultaneously reduce concentrations of poverty, expand affordable housing stock, and further partnerships with the private sector and other community organizations. HOME PJs can serve as valuable partners to PHAs in this regard. HOME may be used to expand mixed-finance public housing developments by promoting partnerships with experienced community housing development corporations (CHDOSs), using the special setaside of funds for projects owned, developed or sponsored by CHDOS. HOME funds can also improve the opportunities of PHAs to address special housing needs of large families, persons with disabilities, single room occupancy tenants, and the homeless. HOME funds may also be used to provide downpayment and closing cost assistance to PHA residents, who may be ready and able to transition into homeownership, possibly through lease-purchase arrangements.

PHAs may use HOME funds for property acquisition, site improvements, new construction, and rehabilitation of residential property. These activities may be carried out independently or in conjunction with HOPE VI and/or public housing projects. As noted earlier in H-D, there is a statutory prohibition on the use of HOME funds for rehabilitation or modernization of public housing currently under an annual contributions contract (ACC).

EXAMPLE

The Housing Authority of the City of Baltimore, Maryland (HACB) received a HOPE VI grant to transform Lexington Terrace, a large public housing development. As part of the overall development, additional public housing replacement units are being developed off site as part of a mixed-finance apartment complex called Mt. Pleasant. The HACB entered into a limited partnership agreement with a development corporation for acquisition, substantial rehabilitation and management of Mt. Pleasant's 207 units. The neighborhood associations are also special limited partners for this project. The partnership used Maryland State funds for acquisition and rehabilitation of 62 of these units which are the only units to receive public housing operating subsidy. One hundred and five (105) of these are HOME-assisted rental units, with a total of $1,775,000 of HOME funds invested in this $12,000,000 project.

This mixed-finance development provides units at all income ranges from very low-income to market rate tenants. With an average subsidy amount of $17,000 per unit, the HOME-assisted units in the Mt. Pleasant project will have a ten year period of affordability. The average amount of HOME funding per unit determines the minimum period of affordability. If the HOME subsidy is under $15,000 per unit, the affordability period will be five (5) years, between $15,000 and $40,000 it will be ten (10) years, and over $40,000 it will be fifteen (15) years for all HOME-assisted units. If the project involved new construction, the affordability period would be 20 years.

After termination of the minimum period of HOME affordability, applicable public housing restrictions will still have to be met for the public housing units.

IV. HOME and New Public Housing Units

HOME funds may be used to assist in the construction or acquisition of public housing units provided Public Housing program requirements, as well as HOME program requirements, are met. If Public Housing program requirements as detailed in Part 941 and supplemented by PIH Notice 96-56 (HA), dated 7/29/96, are not met, the units are NOT eligible for inclusion under the ACC and payment of operating subsidy. Under these rules, HOME funds may be used to provide replacement units for prior HUD-approved demolition or disposition of public housing. However, PHAs are required to use public housing capital funds for at least 50% of the total development cost for incremental units (non-replacement public housing units). Therefore, the amount of HOME funds that can be used for incremental units is limited, where the amount that can be used use for replacement units is not. PHAs must obtain approval by HUD's Field Office of Public Housing prior to using HOME funds to assist new public housing units.

HOME requirements for rental housing at 24 CFR 92.252 apply to all units assisted with HOME funds. For units that are occupied by families whose incomes are at or below 50 percent of median income, as adjusted by family size, and who are not paying more than 30 percent of their adjusted income as a rent contribution, the rents would be those established by the project-based assistance (the public housing operating subsidy), as permitted by 92.252(b)(2). These units meet low-HOME rent requirements. These units may be both public housing units and HOME-assisted units simultaneously. In projects with five or more HOME-assisted units, no less than 20 percent of the assisted units must be designated as low-HOME rent units. It should be noted that if a family's income increases beyond 50 percent but does not exceed 80 percent of median income, the high HOME rent applies when calculating the amount of tenant contribution and the amount of rental subsidy. If the family's income exceeds 80 percent of median income, generally the family must pay 30 percent of income for rent. See 92.252(i) of the HOME rule for exceptions.

NOTE: Traditionally, public housing involves not a market rent but tenant contributions, which equal 30 percent of the household monthly adjusted income, and operating subsidies. Under the HOME regulation when HOME funds are used in conjunction with public housing operating subsidy in the same unit, "rent" for a very low income tenant means the sum of tenant contribution (not to exceed 30 percent of median income) and the public housing operating subsidy.

V. Development Considerations for Public Housing Authorities

Development experience of PHAs varies widely. While many have completed substantial revitalization projects, others require technical assistance in planning and development of initial mixed-financed projects.

A. Proforma

When first embarking on a development project it may be helpful for a PHA to work closely with the PJ to formulate a detailed project proforma. The proforma should:

1. Clearly indicate the number of units which will receive each type of subsidy and detail the eligible costs and the source of funds.

2. Establish a detailed time-line for all projected activities and expenses;

3. Segregate projected capital and operating costs, providing an analysis of each;

4. Estimate costs of debt service, marketing, lease up, and vacancies;

5. Establish a long-term management system accounting for differences in tenant selection and rent structure in accordance with each program;

6. Establish plans for complying with environmental review, contracting, procurement and permitting procedures.

B. Required Information

The PJ is ultimately responsible for its HOME funds and may therefore require submission of other information by the PHA or a development consultant. Other information may be jointly developed by the PJ and PHA and include:

* A layering review of the combined subsidies so that the PJ can support its certification that a subsidy layering review on the project has been conducted;

* An independent analysis of the market and project feasibility;

* Monitoring and assessment procedures by the PHA or a proposed property management firm to ensure that the HOME program, other PJ or HUD requirements will be met.

In mixed-finance projects, it is especially important to delineate the ongoing responsibilities of each party, paying special attention to resource needs and resource commitments of each, and accounting for foreseeable contingencies including reduction in public housing operating subsidy as a result of reduced Federal appropriation. When a project uses multiple lenders, an intercreditor agreement, documenting their respective roles in the transaction and the terms of their relationship, is advisable.

C. Fixed and Floating Subsidy Designations

In mixed-finance multifamily developments, both the HOME and HOPE VI programs allow assisted units to be either fixed or floating. A fixed designation means that the PJ or PHA determines from the time of funding commitment which specific units are HOME-assisted units and which are public housing units (as discussed above, these two categories are NOT exclusive).

A floating designation means that the PJ or PHA maintains a certain number of units within a project as HOME-assisted and a certain number as public housing units. The number of units in each category is designated prior to development and an equal number must meet the eligibility requirements of each program at all times throughout the affordability period. Substitution units must be comparable in terms of size and number of bedrooms to the originally designated units.

High-HOME rent and low-HOME rent units, as discussed above and at 92.252, may also be fixed or floating. When the income of a tenant in a HOME-assisted unit increases above 80 percent of area median and the project has fixed HOME units, the next available HOME-assisted unit must be rented to a HOME income eligible tenant. When the project has floating HOME designations, the next available unit must be rented to a HOME income eligible tenant. The unit then becomes a HOME-assisted unit and rents must be structured accordingly. If the income of a very low-income person (below 50 percent of area median) living in a low-HOME rent unit increases, but does not exceed 80 percent of area median, then the PJ or PHA must rent the next available unit (for floating unit projects) or HOME-assisted unit (for fixed unit projects) to a very low-income tenant at low HOME rents. In projects of five or more HOME-assisted units, at least 20 percent of the HOME units are required to be occupied by very low-income tenants at rents not to exceed low HOME rents.

D. Determining the Number of HOME-Assisted Units

The minimum number of HOME-assisted units in a project may be determined in two ways:

- The PJ or a PHA may allocate HOME costs on a unit by unit basis according to actual per unit HOME eligible costs.

- The PJ or PHA may determine the minimum number of HOME-assisted units by prorating the share of total HOME funds in relation to the total HOME eligible costs of the project. The ratio of the HOME investment to the total eligible development costs is equivalent to the ratio of units that are HOME-assisted to the total number of units. For example, if a PHA acquires land with $100,000 in HOME funds and uses $900,000 in private funds to construct a multifamily rental property on the site, then a minimum of one-tenth ($100,000/$1,000,000) of the units in the development must be designated as HOME-assisted.

When project units are not comparable, method one must be used. Since units in projects with a floating designation must be comparable, PJs and PHA should prorate these projects.

The HOME investment, whether derived on a unit by unit cost allocation or as a prorated share of total costs, may never exceed the maximum per unit subsidy. The maximum per unit subsidy information, as described at 92.250, is available from the Multifamily Housing Division of the HUD Field Office for each PJ.

VI. HOME Tenant-Based Rental Assistance and Public Housing

The HOME program may be used to provide tenant-based rental assistance (TBRA), much like the Section 8 program. Special requirements and considerations are noted below. A PJ may contract or enter into a subrecipient agreement with a PHA to administer HOME TBRA. Administrative costs to the PHA are eligible administrative costs of the HOME Program under General Management Oversight and Coordination at 92.207(a) of the HOME Rule.

HOME funds may be used for TBRA to reduce the size of a PHA's Section 8 waiting list or to address a special preference agreed upon by the PJ and PHA. Families selected from a PHA's Section 8 waiting list who receive HOME TBRA, retain their place on the Section 8 waiting list.

EXAMPLE

Reducing homelessness is a local priority of Fulton County, Georgia, a HOME PJ. The County contracts the Fulton County Housing Authority (FCHA) to administer a HOME funded TBRA program to provide for the homeless. Applicants are referred to the Fulton County Planning and Economic Development Agency from area shelters and social service providers. The agency screens applicants and refers those eligible for assistance to the FCHA. The FCHA runs this program of "HOME vouchers" much like its tenant-based Section 8 program, by providing an orientation, certifying income eligibility, and conducting inspections for housing quality standards.

Also like the Section 8 program, the FCHA enters into a contract with the private landlord agreeing to pay the amount of rent that exceeds 30 percent of the monthly income of the household as adjusted for family size. These contracts are one year commitments. If funds are available, and the household remains eligible, the contract is renewed. If the household has applied for Section 8 assistance, it maintains its place on the Section 8 waiting list while receiving HOME funded TBRA. If a Section 8 certificate or voucher becomes available, the household may terminate the HOME voucher contract and begin receiving assistance under the Section 8 program.

HOME TBRA Requirements

If the PJ plans to use HOME for TBRA, the PJ must certify that TBRA is an essential element of its Consolidated Plan in accordance with 24 CFR 91.225(d)(1), 91.325(d)(1), or 91.425(a)(2)(i), specifying the local market conditions that led to the choice of this option. All families assisted with HOME funds for TBRA must meet HOME eligibility requirements at 92.209(c)(1) and 92.203. Income requirements for the Section 8 program generally fall within the low-income targeting requirements of the HOME program. PJs or PHA must determine the annual income of all tenants. As stated at 92.203, the definition of annual income used by the Section 8 program, at 24 CFR Part 5, subpart F, is one of three methods of assessing income eligibility for HOME. When determining the adjusted income of a family, the PJ must use the definition of adjusted income for the Section 8 program at part 5, subpart F.

HOME funded TBRA contracts can be no longer than 24 months, but may be renewed subject to the availability of HOME funds. All other requirements at 92.209, TBRA: Eligible Costs and Requirements, also apply.

VII. HOME, HOPE VI and Homeownership

HOPE VI grantees may develop homeownership programs significantly comparable to the Nehemiah, HOPE I, III, or III or Public Housing's Section 5(h) program. HOPE VI homeownership projects are largely grant specific, governed by the grant agreement, addendums and all relevant legal documentation. Therefore, the ways in which HOPE VI funds may be used to assist homebuyers differs significantly according to individual and program needs. HOME funds may be used to provide assistance directly to homebuyers as specified at 24 CFR 92.254 and 92.255.

The flexibility of the HOME program and the grant specific nature of HOPE VI allow a great variety of possible methods of structuring homebuyer assistance programs. For example, HOPE VI projects and other PHA initiatives often include a self-sufficiency program, frequently involving the escrow of a portion of increases in earned income to accumulate downpayment and closing costs. HOME funds may be combined with HOPE VI funds to develop homebuyer assistance programs to reward successful families. HOME funds may be used to develop new or rehabilitate existing units as well as facilitate acquisition through interest rate buydowns, soft second mortgages, and downpayment and closing cost assistance. HOME funds may also be used to pay homebuyer counseling costs for families who receive HOME assistance.

EXAMPLE

A PJ contracts with its local PHA to administer a HOME funded Homeownership project. The PHA targets public housing tenants that have been successful in a HOPE VI funded self-sufficiency program, and have established escrow accounts sufficient to make at least a 3 percent downpayment on a new home. All eligible applicants complete a credit counseling and a homebuyer education course provided by a HUD-approved homeowner counseling program.

Once a homebuyer is determined to be eligible, the buyer uses his or her self-sufficiency escrow account as a downpayment on the property. The PHA uses HOPE VI funds as a grant to the homebuyer to make up the difference between the downpayment from the buyer's escrow account and 5 percent of the value of the home. A primary lender provides an FHA-insured first mortgage. The PHA then uses HOME funds to provide a deferred second mortgage so that the first mortgage can be structured at an affordable level for the family.

VIII. HOME Match Requirements

Whenever HOME funds are used, match requirements at 24 CFR 92.218 to 92.222 apply. In general, HOME funds used for development must be matched by a local contribution equal to or greater than 25 percent of the HOME funds drawn down each fiscal year. To be considered eligible as match, a contribution must be made from nonfederal sources and must be a permanent contribution to the HOME project. HOPE VI funds and Public Housing Development funds do not count toward this requirement.